

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Applicant : Jay MERVES, *et al.*
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REPLY BRIEF

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I. INTRODUCTION

In response to the Examiner's Answer ("Answer") mailed September 29, 2009 maintaining the rejections asserted in the Final Office Action mailed April 9, 2008 ("Office Action") of pending claims 1-45, Appellants respectfully request that the Board of Patent Appeals and Interferences (the "Board") reconsider and withdraw the rejections of record, and allow the pending claims.

II. STATUS OF CLAIMS

Claims 1-45 are currently pending in this application. Claims 1-45 were rejected in the Office Action under 35 U.S.C. § 102(e) as being allegedly anticipated by U.S. Patent No. 6,233,566 to Levine *et al.* The rejection of all of the pending claims is hereby appealed.

III. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The issue on appeal is whether the rejection under 35 U.S.C. § 102(e) of claims 1-45 based on U.S. Patent No. 6,233,566 to Levine *et al.* is improper.

IV. ARGUMENT

A. Levine Fails to Anticipate Claims 1-45

Claims 1-45 stand rejected under 35 U.S.C. § 102(e) as being unpatentable over U.S. Patent No. 6,233,566 to Levine *et al.* ("Levine"). This rejection is respectfully traversed.

1. Independent Claim 1 is Patentable Over Levine

Levine Fails to Disclose Receiving Search Criteria

Claim 1 recites, *inter alia*, "receiving . . . search criteria identifying at least one structured securities transaction . . . associated with at least one underlying security." The cited reference, U.S. Patent No. 6,233,566 to Levine *et al.* ("Levine"), fails to disclose this limitation.

The Office alleges that Levine discloses this element. The Office cites to col. 5, lines 55-67 and col. 6, lines 1-3 of Levine. That section of Levine discloses:

In this way, every individual involved in the financial products industry can access information stored in the centralized "marketplace" system of the present invention to aid in completing transactions relating to the financial products. One advantage of the present invention is that it provides a centralized "marketplace" for trading in certain types of financial products.

Col. 5, lines 55-67 through col. 6, lines 1-3. Levine's mere disclosure of a centralized marketplace system fails to anticipate the element of claim 1. Levine does disclose, for example,

In the first instance, an investor may use workstation 280f to review its loans and to search through the loan data using various criteria to select particular loans to be pooled together for sale. These loan pools are stored in databases 221 and 222. Once a mortgage banker has created a loan pool, he can publish it by sending it to the exchange system 210 to be published.

Col. 14, lines 25-31. However, Levine's search disclosure fails to disclose "receiving . . . search

criteria identifying at least one structured securities transaction . . . associated with at least one underlying security,” as recited by the claimed invention.

The Office also alleges that:

Levine teaches in Fig. 1 the typical life cycle of a loan starting with Marketing 104, Loan Origination 108, Wholesaling 112, Servicing 120, Claims 124, Securitization 116 and Loan Termination 128.

Answer, p. 5. Again, the Office has merely cited to a particular term that may be related to a term, in this case securitization, which Appellants note, as a term, does not appear in the recited claim element, and alleges that Levine anticipates the claim element. Appellants surmise that the Office is attempting to relate securitization to “security” from the recited element. These are two different terms with different meanings as appreciated by one of ordinary skill in the art. Appellants respectfully disagree and again submit that Levine fails to anticipate the claimed invention since Levine.

Levine Also Fails to Disclose Retrieving Historical Financial Performance Data

Claim 1 further recites, *inter alia*, “retrieving historical financial performance data associated with the at least one underlying security.” Levine fails to disclose this limitation despite the Office’s allegations to the contrary. The Office relies upon the fact that Levine discloses “the securitization companies can search within a selected loan pool to automatically decline or accept particular loans within a pool that have certain criteria.” Col. 15, lines 57-60. Levine does provide an example of such searches using a consumer’s FICO score and interest rate as criteria. *See* col. 15, lines 64. However, the ability to search a loan pool fails to meet “retrieving historical financial performance data associated with the at least one underlying security.”

Appellant’s refer the Board to their previous arguments in Appellant’s Appeal Brief on

pp. 7-9 regarding Levine's deficiencies with respect to claim 1.

2. The Office's Reliance on Inherency Is Improper

In the alleged rejections for claims 10-24, 27-42, 44, and 45, the Office relies upon inherency for disclosure of the respective claim elements. Appellants respectfully traverse the Office's reliance upon inherency in the anticipation rejection for claims 10-24, 27-42, 44, and 45. Appellants submit that the Office's reliance upon inherency is improper for at least the following reasons.

The doctrine of inherency is well established. As articulated by the Federal Circuit:

Inherent anticipation requires that the missing descriptive material is 'necessarily present,' not merely probably or possibly present, in the prior art." *Trintec Indus., Inc. v. Top-U.S.A. Corp.*, 295 F.3d 1292, 1295, 63 USPQ2d 1597, 1599 (Fed. Cir. 2002) (quoting *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999)).

Rosco, Inc. v. Mirror Lite, Co., 64 USPQ 2d, 1676, 1680 (Fed. Cir. 2002). Therefore, under the doctrine of inherency, the claimed element alleged to be inherent must be necessarily present in the reference. There can be no room for interpretation, and if the element can be performed in at least one different way, then the Office's use of inherency fails to meet the standard for the doctrine of inherency. Appellants address each of the Office's inherency arguments below.

a. Dependent Claim 10

Claim 10 recites "wherein the time at least one of days, months, and years." The Office alleges that "time is an inherent feature when calculating a total rate of return." Answer, p. 15. Appellants submit that total rate of return can be calculated in a variety of ways with a variety of parameters as appreciated by one of ordinary skill in the art. For example, the total rate of return may be calculated using seconds or decades. Therefore, alleging that time is inherently present is improper.

b. Dependent Claim 11

Claim 11 recites “wherein the constant prepayment rate is provided for at least one group of loans organized in terms of at least one of: (i) by year of origination; (ii) by coupon type; (iii) by credit grade; (iv) by collateral balance; and (v) by loan to value ratio.” The Office alleges that “time is an inherent feature when calculating a prepayment analysis.” Answer, p. 15. Appellants submit that a prepayment analysis can be calculated in a variety of ways with a variety of parameters as appreciated by one of ordinary skill in the art. For example, the pre-payment analysis can be calculated using payment amount. Therefore, alleging that time is inherently present is improper.

c. Dependent Claim 12

Claim 12 recites “wherein the credit loss analysis reports include at least the cumulative losses of at least one loan as a function of time.’ The Office alleges that “[t]his limitation is inherent when searching a pool of loans.” Answer, p. 16. Appellants submit that credit loss analysis reports can be structured in a variety of ways with a variety of parameters as appreciated by one of ordinary skill in the art. For example, the credit loss report can be structured without cumulative losses for a loan as a function of loan amount. Further, a pool of loans can be searched using a variety of parameter, such as loan amount. Therefore, alleging that a particular set of parameters are inherently present in a “credit loss analysis report” is improper.

d. Dependent Claim 13

Claim 13 recites “wherein the time is at least one of days, months, and years.” The Office alleges that “[t]his limitation is inherent when searching for non-conforming loans.” Answer, p. 17. Appellants submit that searching for non-conforming loans can be structured in a variety of ways with a variety of parameters as appreciated by one of ordinary skill in the art.

For example, the searching can be performed for a loan as a function of loan amount. Therefore, alleging that a particular element is inherently present is improper.

e. Dependent Claim 14

Claim 14 recites “wherein the cumulative losses are provided for at least one group of loans organized in terms of at least one of: (i) by year of origination; (ii) by coupon type; (iii) by credit grade; (iv) by collateral balance; and (v) by loan to value ratio.” The Office alleges that “[t]his limitation is inherent when searching for non-conforming loans.” Answer, p. 18.

Appellants submit that searching for non-conforming loans can be structured in a variety of ways with a variety of parameters as appreciated by one of ordinary skill in the art. For example, the searching can be performed for a loan as a function of loan amount. Therefore, alleging that a particular element is inherently present is improper.

f. Dependent Claim 15

Claim 15 recites “wherein the credit loss analysis reports include at least loans in foreclosure within at least one group of loans.” The Office alleges that “[t]his limitation is inherent when searching for non-conforming loans which may be in foreclosure.” Answer, p. 19. Credit loss analysis reports can be structured in a variety of manners as appreciated by one of ordinary skill in the art. For example, credit loss reports may include aggregate loans not in foreclosure. Therefore, alleging that a particular set of parameters are inherently present in a “credit loss analysis report” is improper.

g. Dependent Claim 16

Claim 16 recites “wherein the loans in foreclosure are totaled in terms of a current month, a previous month, and to date.” The Office alleges that “[t]his limitation is inherent when searching for non-conforming loans which may be in foreclosure.” Answer, p. 20. Loans in

foreclosure can be totaled in a variety of manners as appreciated by one of ordinary skill in the art. For example, loans in foreclosure can be totaled in terms of days. Therefore, alleging that a particular element is inherently present is improper.

h. Dependent Claim 17

Claim 17 recites “wherein the loans in foreclosure are organized in terms of at least one of (i) by year of origination; (ii) by coupon type; (iii) by credit grade; (iv) by collateral balance; (v) by loan to value ratio; and (vi) by cumulative loss ratio.” The Office alleges that “[t]his limitation is inherent when searching for non-conforming loans which may be in foreclosure.” Answer, p. 21. Loans in foreclosure can be organized in a variety of manners as appreciated by one of ordinary skill in the art. For example, loans in foreclosure can be organized in terms of months. Therefore, alleging that a particular element is inherently present is improper.

i. Dependent Claim 18

Claim 18 recites “wherein the delinquency analysis reports include at least the rate of delinquency of at least one group of loans as a function of time.” The Office alleges that “[t]his limitation is inherent when searching for non-conforming loans which may be in foreclosure or listed in a delinquency report prior to entering foreclosure.” Answer, p. 22. Loans in delinquency can be organized in a variety of manners as appreciated by one of ordinary skill in the art. For example, loans in delinquency can be listed using the loan account number. Therefore, alleging that a particular element is inherently present is improper.

j. Dependent Claim 19

Claim 19 recites “wherein the time is at least one of current month, a previous month, and two months previous.” The Office alleges that “[t]his limitation is inherent when searching for non-conforming loans which may be in foreclosure or listed in a delinquency report prior to entering

foreclosure.” Answer, p. 23. Loans in delinquency can be organized in a variety of manners as appreciated by one of ordinary skill in the art. For example, loans in delinquency can be listed as a projection for a future month. Therefore, alleging that a particular element is inherently present is improper.

k. Dependent Claim 20

Claim 20 recites “wherein the rate of delinquency is provided for at least one group of loans organized in terms of at least one of: (i) by year of origination; (ii) by coupon type; (iii) by credit grade; (iv) by collateral balance; (v) by loan to value ratio; and (vi) number of days delinquent.”

The Office alleges that “[t]his limitation is inherent when searching for non-conforming loans which may be in foreclosure or listed in a delinquency report prior to entering foreclosure.”

Answer, p. 24. Loans in delinquency can be organized in a variety of manners as appreciated by one of ordinary skill in the art. For example, loans in delinquency can be organized by month of origination or locality of origination. Therefore, alleging that a particular element is inherently present is improper.

l. Dependent Claim 21

Claim 21 recites “wherein the number of days delinquent is at least one of 30, 60 and 90 days.” The Office alleges that “[t]his limitation is inherent when searching for non-conforming loans which may be in foreclosure or listed in a delinquency report prior to entering foreclosure.”

Answer, p. 24. Loans in delinquency can be organized in a variety of manners as appreciated by one of ordinary skill in the art. For example, the period of delinquency can be 45 days.

Therefore, alleging that a particular element is inherently present is improper.

m. Dependent Claim 22

Claim 22 recites “wherein the trigger testing reports indicate whether the performance of

an underlying pool of assets has at least one of fallen below or risen above a predetermined threshold.” The Office alleges that “the limitation is an inherent feature of loan search criteria.” Answer, p. 25. Loans can be searched using a variety of parameters as appreciated by one of ordinary skill in the art. For example, the trigger testing reports can indicate other parameters such as the performance meeting a predetermined threshold. Therefore, alleging that a particular element is inherently present is improper.

n. Dependent Claim 23

Claim 23 recites “wherein the threshold is defined in an indenture document for at least one of the structured securities transactions.” The Office alleges that “the limitation is an inherent feature of loan search criteria.” Answer, p. 26. Loans can be searched using a variety of parameters as appreciated by one of ordinary skill in the art. For example, the threshold can be defined in a non-indentured document. Therefore, alleging that a particular element is inherently present is improper.

o. Dependent Claim 24

Claim 24 recites “providing indicia which includes a least one interpretation of the at least one report.” The Office alleges that the limitation “is an inherent feature of requesting and receiving a borrower’s credit report from a credit report agency for loan approval.” Answer, p. 27. Reports can be provided in a variety of forms as appreciated by one of ordinary skill in the art. For example, a credit report can be provided without indicia including an interpretation of the credit report. Therefore, alleging that a particular element is inherently present is improper.

p. Dependent Claim 27

Claim 27 recites “wherein the time is at least one of days, months, and years.” The Office alleges that “time is an inherent feature when calculating a total rate of return.” Answer,

p. 29. Appellants submit that total rate of return can be calculated in a variety of ways with a variety of parameters as appreciated by one of ordinary skill in the art. For example, the total rate of return may be calculated using seconds or decades. Therefore, alleging that time is inherently present is improper.

q. Dependent Claim 28

Claim 28 recites “wherein the aggregate constant prepayment rate is provided for at least one group of loans organized in terms of at least one of (i) by year of origination; (ii) by coupon type; (iii) by credit grade; (iv) by collateral balance; (v) by loan to value ratio; and (vi) by issuer.” The Office alleges that “the rate is an inherent feature when calculating a prepayment analysis.” Answer, p. 30. Appellants submit that a prepayment analysis can be calculated in a variety of ways with a variety of parameters as appreciated by one of ordinary skill in the art. For example, the pre-payment analysis can be calculated using time. Therefore, alleging that a particular element is inherently present is improper.

r. Dependent Claim 29

Claim 29 recites “wherein the credit loss analysis reports include at least the aggregate cumulative losses of loans as a function of time.” The Office alleges that “[t]his limitation is inherent when searching a pool of loans.” Answer, p. 30. Appellants submit that credit loss analysis reports can be structured in a variety of ways with a variety of parameters as appreciated by one of ordinary skill in the art. For example, the credit loss report can be structured without cumulative losses for a loan as a function of loan amount. Further, a pool of loans can be searched using a variety of parameter, such as loan amount. Therefore, alleging that a particular set of parameters are inherently present in a “credit loss analysis report” is improper.

s. Dependent Claim 30

Claim 30 recites “wherein the time is at least one of days, months, and years.” The Office alleges that “[t]his limitation is inherent when searching for non-conforming loans.” Answer, p. 31. Appellants submit that searching for non-conforming loans can be structured in a variety of ways with a variety of parameters as appreciated by one of ordinary skill in the art. For example, the searching can be performed for a loan as a function of loan amount. Therefore, alleging that a particular element is inherently present is improper.

t. Dependent Claim 31

Claim 31 recites “wherein the aggregate cumulative losses are provided for at least one group of loans organized in terms of at least one of: (i) by year of origination; (ii) by coupon type; (iii) by credit grade; (iv) by collateral balance; (v) by loan to value ratio; and (vi) by issuer.” The Office alleges that “[t]his limitation is inherent when searching for non-conforming loans.” Answer, p. 32. Appellants submit that searching for non-conforming loans can be structured in a variety of ways with a variety of parameters as appreciated by one of ordinary skill in the art. For example, the searching can be performed for a loan as a function of loan amount. Therefore, alleging that a particular element is inherently present is improper.

u. Dependent Claim 32

Claim 32 recites “wherein the credit loss analysis reports include at least aggregate loans in foreclosure within at least one group of loans.” The Office alleges that “[t]his limitation is inherent when searching for non-conforming loans which may be in foreclosure.” Answer, p. 33. Credit loss analysis reports can be structured in a variety of manners as appreciated by one of ordinary skill in the art. For example, credit loss reports may include non-aggregate loans not in foreclosure. Therefore, alleging that a particular set of parameters are inherently present in a

“credit loss analysis report” is improper.

v. Dependent Claim 33

Claim 33 recites “wherein the aggregate loans in foreclosure are totaled in terms of a current month, a previous month, and to date.” The Office alleges that “[t]his limitation is inherent when searching for non-conforming loans which may be in foreclosure.” Answer, p. 34. Loans in foreclosure can be totaled in a variety of manners as appreciated by one of ordinary skill in the art. For example, loans in foreclosure can be totaled in terms of days. Therefore, alleging that a particular element is inherently present is improper.

w. Dependent Claim 34

Claim 34 recites “wherein the aggregate loans in foreclosure are organized in terms of at least one of: (i) by year of origination; (ii) by coupon type; (iii) by credit grade; (iv) by collateral balance; (v) by loan to value ratio; (vi) by cumulative loss ratio; and (vii) by issuer.” The Office alleges that “[t]his limitation is inherent when searching for non-conforming loans which may be in foreclosure.” Answer, p. 35. Loans in foreclosure can be organized in a variety of manners as appreciated by one of ordinary skill in the art. For example, loans in foreclosure can be organized in terms of months. Therefore, alleging that a particular element is inherently present is improper.

x. Dependent Claim 35

Claim 35 recites “wherein the delinquency analysis reports include at least an aggregate rate of delinquency of at least one group of loans as a function of time.” The Office alleges that “[t]his limitation is inherent when searching for non-conforming loans which may be in foreclosure or listed in a delinquency report prior to entering foreclosure.” Answer, p. 36. Loans in delinquency can be organized in a variety of manners as appreciated by one of ordinary skill

in the art. For example, loans in delinquency can be listed using the loan account number.

Therefore, alleging that a particular element is inherently present is improper.

y. Dependent Claim 36

Claim 36 recites “wherein the time is at least one of a current month, a previous month, and two months previous.” The Office alleges that “[t]his limitation is inherent when searching for non-conforming loans which may be in foreclosure or listed in a delinquency report prior to entering foreclosure.” Answer, p. 37. Loans in delinquency can be organized in a variety of manners as appreciated by one of ordinary skill in the art. For example, loans in delinquency can be listed as a projection for a future month. Therefore, alleging that a particular element is inherently present is improper.

z. Dependent Claim 37

Claim 37 recites “wherein the aggregate rate of delinquency is provided for at least one group of loans organized in terms of at least one of: (i) by year of origination; (ii) by coupon type; (iii) by credit grade; (iv) by collateral balance; (v) by loan to value ratio; (vi) number of days delinquent; and (vii) by issuer.” The Office alleges that “[t]his limitation is inherent when searching for non-conforming loans which may be in foreclosure or listed in a delinquency report prior to entering foreclosure.” Answer, p. 38. Loans in delinquency can be organized in a variety of manners as appreciated by one of ordinary skill in the art. For example, loans in delinquency can be organized by month of origination or locality of origination. Therefore, alleging that a particular element is inherently present is improper.

aa. Dependent Claim 38

Claim 38 recites “wherein the number of days delinquent is at least one of 30, 60 and 90 days.” The Office alleges that “[t]his limitation is inherent when searching for non-conforming

loans which may be in foreclosure or listed in a delinquency report prior to entering foreclosure.”

Answer, p. 39. Loans in delinquency can be organized in a variety of manners as appreciated by one of ordinary skill in the art. For example, the period of delinquency can be 45 days.

Therefore, alleging that a particular element is inherently present is improper.

bb. Dependent Claim 39

Claim 39 recites “providing at least one electronic screen to the at least one user over the computer network which includes the subset of trustee reports.” The Office alleges that “Trustees and Trustee Reports are inherent features of a Trust Company.” Answer, p. 39.

Levine discloses “each type of subscriber would be provided a different set of GUI screens to access their respective functions of interests within the exchange system 200.” Col. 12, lines 20-23. However, Levine’s “functions of interest” do not include, explicitly or inherently, trustee reports. Levine further discloses:

A secure interface 316 allows trust companies to access system 200 via workstation 280c. Upon receipt of the loan files, the trust company will perform a due diligence analysis on the loan (or on a statistical sampling of several loans from a pool of loans). The due diligence analysis will ensure that the supporting documentation provided by the borrower matches the information the lender relied on in approving the loan (i.e., the information entered into the loan application). Once the due diligence is completed, the trust company will forward a certificate to the mortgage banker which includes verification of the authenticity of the loan(s).

Col. 15, lines 7-17. Levine discloses trust companies in the context of loans and transfer of such to a trust company. Levine has no disclosure of providing an electronic screen including a subset of trustee reports. Furthermore, Levine makes no inference that such elements are a part of Levine’s system and method. Accordingly, the Examiner alleging that such elements are inherent with respect to Levine is improper.

cc. Dependent Claim 40

Claim 40 recites “providing at least one electronic screen to the at least one user over the computer network which includes the subset of indenture documents.” The Office alleges that “Trustees and Trustee Reports are inherent features of a Trust Company.” Answer, p. 40. The arguments presented above with respect to claim 39 are equally applicable here. However, Levine’s “functions of interest” do not include, explicitly or inherently, indenture documents. Levine has no disclosure of providing an electronic screen including a subset of indenture documents. Furthermore, Levine makes no inference that such elements are a part of Levine’s system and method. Therefore, alleging that a particular element is inherently present is improper.

dd. Dependent Claim 41

Claim 41 recites “wherein the indenture documents include at least one of prospectuses and pooling and servicing agreements.” The Office alleges that “Trustees, Trustee Reports and Indenture Documents are inherent features of a Trust Company.” Answer, p. 41. The arguments presented above with respect to claim 40 are equally applicable here. Levine has no disclosure regarding indenture documents. Furthermore, indenture documents can be associated with other entities such as bonds. Therefore, alleging that a particular element is inherently present is improper.

ee. Dependent Claim 42

Claim 42 recites

receiving search criteria over the computer network from at least one of the users for identifying at least a portion of at least one indenture document;
retrieving the portion the indenture document identified by the search criteria; and
providing at least one electronic screen to the at least one user over the computer network which includes the portion of the indenture documents.

The Office alleges that “Trustees, Trustee Reports and Indenture Documents are inherent features of a Trust Company.” Answer, p. 42. The arguments presented above with respect to claim 40 are equally applicable here. Levine provides no disclosure of indenture documents. Furthermore, indenture documents can be associated with other entities such as bonds. Therefore, alleging that a particular element is inherently present is improper.

ff. Dependent Claim 44

Claim 44 recites “wherein the contact information includes at least one of the issuer, underwriter, co-underwriter, bond issuer, rating agency, trustee, master servicer, and servicer.” The Office alleges that “the limitation is inherent when a brokerage company is searching for mortgage-backed securities and to negotiate to buy and/or sell the mortgage-backed securities.” Answer, p. 44. One of ordinary skill in the art would appreciate that contact information can include a variety of different contacts. For example, the contact may be the financing company. Therefore, alleging that a particular element is inherently present is improper.

gg. Dependent claim 45

Claim 45 recites “wherein the search criteria includes at least one of: (i) an issuer name; (ii) an investor name; (iii) a type of security; (iv) a coupon type, when the security includes at least one loan; (v) a credit grade, when the security includes at least one loan; (vi) a loan to value ratio, when the security includes at least one loan, and (vii) property type, when the security includes real property.” The Office alleges that “the limitation is inherent when a brokerage company is searching for mortgage-backed securities and to negotiate to buy and/or sell the mortgage-backed securities.” Answer, p. 46. One of ordinary skill in the art would appreciate that search criteria can contain a variety of different parameters. For example, the search criteria may be the security’s value. Therefore, alleging that a particular element is inherently present is

improper.

V. CONCLUSION

In view of the foregoing, it is respectfully submitted that the present application is in condition for allowance, and an early indication of the same is courteously solicited.

Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-0206, and please credit any excess fees to the same deposit account.

Respectfully submitted,

Date: _____

11/13/09



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